

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

76-1129

BS
MS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee,

-against-

Docket No. 76-1129

ANGELO RICCO, JAMES RIZZIERI and
CHARLES INDIVIGLIA, a/k/a "Charlie
Poops",

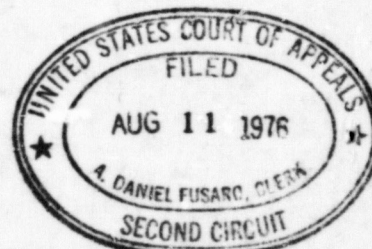
Defendants-Appellants.

Rec'd 8/11

REPLY-BRIEF

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J. JEFFREY WEISENFELD
On the Brief



PRELIMINARY STATEMENT

In its brief, the Government points out instances in which arguments made on behalf of Angelo Ricco were premised upon a mis-reading of the facts. Specifically, these mis-readings were: 1) That it was Rizzieri who told Agent Ferrarone that his source of supply was Ricco, and 2) That this source of supply was identified as being both Angelo Ricco and Bragiolo.

The Government is absolutely correct in pointing out 1) That it was Donovan, not Rizzieri, who informed Ferrarone of Rizzieri's sources and 2) In pointing out that Donovan told Ferrarone that Rizzieri had identified his source as Anthony Ricco ("Bragiolo") and not Angelo Ricco.

Counsel wishes to apologize to the Court and the Government for these errors and the resulting mis-statements of fact. While there can be no excuse for what occurred, counsel would like the Court and the Government to understand that these errors were entirely unintentional. Counsel would also like to express his gratitude to the Government for the restrained manner in which it treated counsel's errors.

POINT I

RESPONDING TO POINT II OF THE GOVERNMENT'S BRIEF.

Due to a mis-reading of the facts, appellate counsel argued in his brief (Point I, p.11 n.1) that under Bruton v. United States,

391 U.S. 123 (1968) Ferrarone's testimony, relating what he had been told regarding the sources of Rizzieri's drugs, was improperly admitted. It appears, upon re-reading the record, that it was trial counsel who correctly objected on hearsay grounds. In light of the above, appellant now requests this Court to consider the propriety of admitting this double hearsay (Donovan told Ferrarone what Rizzieri had told him). It is appellant's position that his objection was timely and that the testimony was clearly inadmissible hearsay.

It is clear, that under Rule 804 Federal Rules of Evidence, Ferrarone's testimony as to what Donovan told him, met virtually none of the necessary predicates to admissibility. First, Donovan was not unavailable. Rule 804(a) Federal Rules of Evidence. Second, there were no circumstances affording a guarantee of trustworthiness and, third, the proponent of this hearsay evidence gave no pre-trial notice of intent to use this evidence. Rule 804(b)(5). Thus, this evidence was not admissible and its inclusion at trial requires reversal.

CONCLUSION

THE JUDGMENT OF CONVICTION
SHOULD BE REVERSED AND A NEW
TRIAL GRANTED.

Respectfully submitted,

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Attorneys for Appellant

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On the Brief

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TO THE HONORABLE SENATE OF THE UNITED STATES
IN SENATE, January 12, 1903.
REPORT
OF THE
COMMISSIONER OF THE GENERAL LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
JANUARY 10, 1902.
AND
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
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